

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cebridge Acquisition, L.P. d/b/a Suddenlink)	CSR 7205-E
)	
Charter Communications)	CSR 8216-E, CSR 8217-E & CSR 8221-E
)	
Time Warner Entertainment-Advance/Newhouse Partnership)	CSR 8041-E
)	
Petitions for Determination of Effective Competition in Various Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: May 24, 2010

Released: May 24, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Cebridge Acquisition, L.P. d/b/a Suddenlink (“Suddenlink”), Charter Communications (“Charter”), and Time Warner Entertainment-Advance/Newhouse Partnership (“Time Warner”), hereinafter referred to as “Petitioners,” have filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioners are subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioners allege that their cable systems serving the Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioners alternatively claim to be exempt from cable rate regulation in the Communities listed on Attachment B because the Petitioners serve fewer than 30 percent of the households in those franchise areas. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our

¹ See 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵ See 47 C.F.R. §§ 76.906 & 907.

finding that Petitioners are subject to effective competition in the Communities listed on Attachments A and B.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that the Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with the Petitioners or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that the Petitioners have provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in these petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed are Petitioners’ assertions that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

⁶ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷ 47 C.F.R. § 76.905(b)(2)(i).

⁸ *See* Cebridge Petition CSR 7205-E at 3-4; Charter Petition CSR 8216-E at 3-4; Charter Petition CSR 8217-E at 3-4; Charter Petition CSR 8221-E at 3-4; Time Warner Petition CSR 8041-E at 4-5..

⁹ *Mediacom Illinois LLC*, 21 FCC Rcd 1175, 1176, ¶ 3 (2006).

¹⁰ 47 C.F.R. § 76.905(e)(2).

¹¹ *See* 47 C.F.R. § 76.905(g). *See also* Cebridge Petition CSR 7205-E at 4-5; Charter Petition CSR 8216-E at 4-5; Charter Petition CSR 8217-E at 4-5; Charter Petition CSR 8221-E at 4; Time Warner Petition CSR 8041-E at 5-6.

¹² *See* Cebridge Petition CSR 7205-E at 4-5 and Exhibits 1 and 2; Charter Petition CSR 8216-E at 4-5 and Exhibits 1 and 2; Charter Petition CSR 8217-E at 4-5 and Exhibits 1 and 2; Charter Petition CSR 8221-E at 4-5 and Exhibits 1 and 2; Time Warner Petition CSR 8041-E at 5-6.

¹³ *See* Cebridge Petition CSR 7205-E at 3; Charter Petition CSR 8216-E at 2-3; Charter Petition CSR 8217-E at 2-3; Charter Petition CSR 8221-E at 2-3; Time Warner Petition CSR 8041-E at 2-3.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioners assert that they are the largest MVPDs in the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment A, we find that the Petitioners have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

8. Based on the foregoing, we conclude that the Petitioners have submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and the Petitioners are subject to effective competition in the Communities listed on Attachment A.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioners allege that they are subject to effective competition under the low penetration effective competition test because they serve less than 30 percent of the households in the franchise areas listed on Attachment B.

Based upon the subscriber penetration level calculated by the Petitioners, as reflected in Attachment B, we find that the Petitioners have demonstrated that the percentage of households subscribing to their cable service is less than 30 percent of the households in the Communities listed on Attachment B. Therefore, the low penetration test is also satisfied as to those Communities.

¹⁴ Cebridge Petition CSR 7205-E at 5; Charter Petition CSR 8216-E at 6; Charter Petition CSR 8217-E at 6; Charter Petition CSR 8221-E at 6; Time Warner Petition CSR 8041-E at 7.

¹⁵ Cebridge Petition CSR 7205-E at 5-7; Charter Petition CSR 8216-E at 5-6; Charter Petition CSR 8217-E at 5-7; Charter Petition CSR 8221-E at 5-7; Time Warner Petition CSR 8041-E at 7-8.

¹⁶ Cebridge Petition CSR 7205-E at 7 and Exhibit 6; Charter Petition CSR 8216-E at 6-7 and Exhibit 5; Charter Petition CSR 8217-E at 6-7 and Exhibit 5; Charter Petition CSR 8221-E at 6-7 and Exhibit 5; Time Warner Petition CSR 8041-E at 7 and Exhibit C.

¹⁷ 47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Cebridge Acquisition, L.P. d/b/a Suddenlink, Charter Communications, and Time Warner Entertainment-Advance/Newhouse Partnership **ARE GRANTED**.

11. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachments A and B **IS REVOKED**.

12. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸ 47 C.F.R. § 0.283.

ATTACHMENT A

CSR 7205-E

COMMUNITIES SERVED BY CEBRIDGE ACQUISITION, L.P. D/B/A SUDDENLINK COMMUNICATIONS

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Cushing City	OK0173	34.45	3071	1058
Drumright City	OK0240	16.87	1209	204
Perkins Town	OK0242	45.23	913	413
Stillwater City	OK0059	18.60	15604	2902

CSR 8216-E

COMMUNITY SERVED BY CHARTER COMMUNICATIONS

Community	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Roanoke Rapids	NC0039	27.56	6909	1904

CSR 8217-E

COMMUNITY SERVED BY CHARTER COMMUNICATIONS

Community	CUID	CPR*	2000 Census Households	Estimated DBS Subscribers
Woodfin	NC0301	20.80	1394	290

CSR 8221-E

COMMUNITIES SERVED BY CHARTER COMMUNICATIONS

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Granite Falls	NC0371	31.17	1758	548
Hickory	NC0113	19.87	16174	3213
Lenoir	NC0024 NC0148	17.03	6913	1177
Rhodhiss	NC0372 NC0373	24.12	170	41

CSR 8041-E

COMMUNITIES SERVED BY TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE
PARTNERSHIP

Communities	CUIDs	CPR*	2000 Census Households	Estimated DBS Subscribers
Alamo	TX0165	21.42	4621	990
Brownsville	TX0166	16.51	38174	6303
Edcouch	TX0037	29.29	891	261
Elsa	TX0336	29.33	1575	462
La Feria	TX0170	24.29	2021	491
La Grulla	TX1234	18.65	370	69
La Joya	TX1439	17.56	860	151
La Villa	TX1407	29.1	323	94
Lyford	TX1433	33.81	562	190
Palmhurst	TX2097	22.6	1226	277
Palmview	TX2063	22.87	1093	250
Penitas	TX1438	17.55	319	56
Port Isabel	TX0498	17.04	1649	281
Primera	TX1436	33.33	735	245
Rio Grande City	TX2189 TX0176	18.87	3333	629
Rio Hondo	TX1432	40.65	588	239
San Benito	TX0178	23.65	7065	1671
San Juan	TX0177	15.86	6606	1048
Santa Rosa	TX1434	25.58	774	198

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT B**CSR 7205-E****COMMUNITY SERVED BY CEBRIDGE ACQUISITION, L.P. D/B/A SUDDENLINK COMMUNICATIONS**

Community	CUID	Franchise Area Households	Cable Subscribers	Penetration Percentage
Payne County	OK0416	6138	442	7.20

CSR 8041-E**COMMUNITIES SERVED BY TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP**

Communities	CUIDs	Franchise Area Households	Cable Subscribers	Penetration Percentage
Combes	TX1437	775	143	18.45
Hidalgo	TX1408 TX1871 TX2143 TX2163 TX2165 TX2166 TX2167 TX2168	1747	2	0.11
Sullivan City	TX2293	981	201	20.49